

In the Matter of License No. 298069 and Merchant Mariner's Document
No. Z-195454

Issued to: Aubrey A. Goode

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1412

Aubrey A. Goode

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 22 March 1963, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for three months on nine months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Junior Third Assistant Engineer on board the United States SS FLYING FISH under authority of the license above described, Appellant failed to perform his duties on four successive days due to the effects of intoxication.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a certified copy of an entry in the Official Logbook of the SS FLYING FISH and the testimony of her Master.

In defense, Appellant offered in evidence two exhibits, the testimony of an Oiler on board the SS FLYING FISH and Appellant's testimony.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved.

FINDINGS OF FACT

On the 13th, 14th, 15th and 16th of December 1962 Appellant served as a Junior Third Assistant Engineer on board the United States SS FLYING FISH and acted under the authority of his license.

On the 13th, while the vessel was in the Japanese port of Shimizu, the Chief Engineer informed the Master that Appellant

could not perform his assigned duties, whereupon the Master and the Chief Engineer proceeded to search Appellant's room and found an empty whisky bottle. The Master asked Appellant whether he was "drunk". Appellant replied that he was not intoxicated but was ill.

The following day, when the SS FLYING FISH docked in Yokohama, the Master summoned a physician from shore to examine Appellant. The examination took place in the Master's presence and the physician diagnosed Appellant's condition to be "acute alcoholism" and "myositis, low back". He concluded that Appellant was "unfit for duty until sober. (2-3 days)."

The physician was called back the following day by the Master to attend to Appellant. During the two visits by the physician, Appellant received five injections and three prescriptions for medication.

Appellant returned to his assigned duties on the 17th of December.

PRIOR RECORD: admonished on the 5th of June 1956 in New York, New York for failure to join the SS AFRICAN STAR.

BASES OF APPEAL

Appellant alleges on appeal that the Government did not carry its burden of proof. He argues that the physician's conclusions, which were in the form of a diagnosis contained in the Requisition For and Report of Medical Attention (a standard medical form used by this particular shipping line), are not sufficient as a basis for finding Appellant guilty. Appellant states the he introduced this particular medical form in evidence to show that there was no basis for the doctor's "dogmatic conclusion". On the contrary, the Master's testimony does not agree with the physician's statement that Appellant was suffering from "acute alcoholism".

Appellant also contends that in the absence of findings by the doctor, on which his conclusion of intoxication was based, the Government had the burden to produce witnesses who could testify to Appellant's behavior from direct observation.

APPEARANCE: Bernard Rolnick, Esq., of New York, New York, on the brief for Appellant

OPINION

The Government's case against Appellant consisted of the Master's testimony and a certified copy of an excerpt from the

logbook of the SS FLYING FISH. The latter contains a reiteration of the doctor's diagnosis that Appellant suffered from acute alcoholism. The Master admitted that he logged Appellant solely on the basis of the doctor's report. Appellant's quarrel with this is that the report should not have been used as the basis for action against Appellant's documents.

The record indicates that the physician was called only after Appellant had stated that he was ill. Appellant's own testimony shows that the physician examined him in the Master's presence, gave him two injections, the nature of which could not be ascertained, and wrote out a prescription which was filled on shore. The following day the physician returned and gave Appellant three more shots and wrote out two other prescriptions. The medical log of the SS FLYING FISH shows that the doctor prescribed a soft diet, rest and fluids for Appellant. All of this makes it quite clear that the doctor gave a medical opinion on Appellant's condition only after thoroughly examining him. It is noted that he was apparently correct in his diagnosis since Appellant returned to his assigned duties two days later. As said by Judge Parker in Long v. United States, 59 F.2d 602, 603 (4th Cir. 1932), "The diagnosis is the opinion of a scientific expert who has examined [a patient], heard his statements, and observed his symptoms. It approximates a statement of fact, being in reality what a physician observes when he views [a patient] with a trained eye of an expert". It follows that the physician's diagnosis in this case is but another factor to be considered by the Hearing Examiner in his evaluation of the evidence.

It is noted that the physician's diagnosis is supported by the undisputed fact that Appellant consumed whisky prior to the doctor's examination. The Master found an empty whisky bottle approximately the size of one pint in Appellant's room. His explanation that he consumed one-half of it for medicinal purposes and gave the other half away was not accepted by the Examiner, who is in the best position to judge the credibility of a witness. I do not find any error in this rejection. See Commandant's Appeal Decisions Nos. 1297, 1290, 1288, and 1248. There is also testimony by Appellant's witness that additional liquor was available and there was considerable drinking on the ship.

A review of the Master's testimony shows no direct conflict with the doctor's opinion. The Master testified that he logged Appellant solely on the strength of the doctor's report, and that he did not form an independent opinion from observation as to whether Appellant was intoxicated. But even assuming that he had formed such an opinion, it would not ordinarily be entitled to as much weight as the opinion of a physician, who is an expert in his field.

Appellant's other contention that the Government had the burden of producing witnesses who could, from direct observation, testify to Appellant's behavior is not tenable in view of my determination that the Government sustained its burden of proof by substantial evidence in this case.

ORDER

The order of the Examiner dated at New York, New York on 22 March 1963 is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 15th day of August 1963.